IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUMMONS FOR JUDGMENT NO. 88 OF 2007
IN
SUMMARY SUIT NO.1954 OF 2006

M/s. Navinbhai Cables Pvt. Ltd. ..Plaintiff.
Vs.
Dattajirao Gajananrao Jhavare-Patil ..Defendant.
....
Mr. Jayesh Bhatt for the Plaintiff.
Mr. Vivek Salunke for the Defendant.
....

CORAM: **DR. D.Y. CHANDRACHUD, J.**

9th April, 2007.

P.C. :

1. The Plaintiff has instituted a suit under Order 37 of the Code of Civil Procedure, 1908 on the basis of invoices for goods sold, supplied and delivered and a dishonour of cheques issued by the Defendant in acknowledgment of his liability. In pursuance of an order placed by the Defendant the Plaintiff sold, supplied and delivered on 12th July, 2003 218 mtrs. of cables valued at Rs.1,02,024/-. The goods were dispatched from the manufacturer in

the State of Gujarat to the party notified by the Defendant at Secunderabad. The invoice at Exh. A was duly received by the Defendant. After giving due credit for the amounts paid by the Defendant, a balance of Rs.83,524/- remained to be due and payable. The following cheques were issued by the Defendant on the Bank of Maharashtra :

	Cheque No.	Date	Amount
(i)	377122	25-9-2003	30,000/-
(ii)	377123	25-10-03	39,300/-
(iii)	382517	20-10-03	10,000/-
(iv)	382521	13-08-04	15,000/-

2. On the request of the Defendant, the Plaintiff deferred the presentation of the cheques. Ultimately, one of the cheques dated 13th August, 2004 in the amount of Rs.15,000/- was deposited, but was dishonoured by the bankers of the Defendant. The Plaintiff instituted proceedings under Section 138 of the Negotiable Instruments Act, 1881 and an amount of Rs.15,000/- was realized.

Consequently an amount of Rs.68,524/- is stated to be due and payable.

3. An affidavit in reply has been filed on behalf of the Defendant in which the defence in paragraph 4 is that the Plaintiff is the distributor for Torento Cable Company, Ahmedabad and that when the order was placed on the Plaintiff, it was agreed that goods of the aforesaid company would be supplied. However, according to the Defendant the goods supplied were of “Plaza Company”. The rate quoted by Plaza was according to the Defendant Rs.300/- per mtr. whereas the Defendant was billed for the transaction at the rate of Rs.468/- per mtr.

4. There is no merit in the defence whatsoever. Counsel appearing for the Defendant fairly accepts that there is no specification in writing to the effect that the goods that were to be supplied should be of Torento Cable Company. As stated in the rejoinder filed on behalf of the Plaintiff, the Defendant accepted the

goods which were sold, supplied and delivered without any objection and it was for the first time in the affidavit in reply that the aforesaid defence was raised. If the Defendant had any objection to the quality of the goods supplied or the price, it was open to the Defendant to return the same immediately. The Defendant has accepted and utilized the goods and it is undisputed that there is not even a single letter by the Defendant on the record complaining of the quality of the goods. Counsel appearing for the Defendant again fairly accepted that the Defendant is not in a position to establish that the Plaintiff was informed in writing of any such objection. Though the Defendant has adverted to a letter dated 22nd July, 2003 in paragraph 4 of the reply, it has not been disputed before the Court that there is no proof of the aforesaid letter having been remitted to the Plaintiff or of having been received by the Plaintiff.

5. The next defence in paragraph 6 is that the Defendant has made payment in cash of Rs.60,000/-. The defence is clearly an afterthought. If the payment of Rs.60,000/- was made, there is

absolutely no explanation as to why the four cheques were issued by the Defendant to the Plaintiff between September 2003 and August, 2004.

6. The defence therefore is wholly lacking in any element of trustworthiness or acceptability and is purely an after thought to defeat the claim of the Plaintiff. In the circumstances, the suit shall have to be decreed and is accordingly decreed as prayed subject to the direction that the Plaintiff will be entitled to interest at the rate of 9% per annum from the date of the institution of the suit until the date of the decree and at the same rate from the date of the decree until payment or realization.

Refund of Court Fess, if any, as per rules.